

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

DWAYNE D. MCGOWAN,

Plaintiff,

v.

C.A. No.: 6:14-cv-6-WSS

OM SHIVAM, INC.,
d/b/a KWIK KAR LUBE AND TUNE,
a Texas corporation, and,
AMIT PATEL, an individual,

Defendants.

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, DWAYNE D. MCGOWAN, by and through his undersigned counsel, hereby sues Defendants, OM SHIVAM, INC., d/b/a KWIK KAR LUBE AND TUNE, and AMIT PATEL, in support thereof states as follows:

1. Plaintiff brings this action for overtime compensation and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. § 201, *et seq.*
2. Plaintiff is an individual residing in Copperas Cove, Texas.
3. Defendant, OM SHIVAM, INC., d/b/a KWIK KAR LUBE AND TUNE, is a corporation formed and existing under the laws of the State of Texas and maintains an office in Copperas Cove, Texas.
4. Defendant, AMIT PATEL, is an individual residing in Copperas Cove, Texas, and at all times acted directly or indirectly in the interest of Defendant, OM

SHIVAM, INC., d/b/a KWIK KAR LUBE AND TUNE, in relationship to Plaintiff and his employment; thus, is an employer pursuant to 29 U.S.C. § 203(d).

5. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1337, and by 29 U.S.C. § 216(b).

6. Venue is proper in this district under 28 U.S.C. § 1391.

7. At all times material to this complaint, Defendant, OM SHIVAM, INC., d/b/a KWIK KAR LUBE AND TUNE, employed two (2) or more employees and had an annual dollar volume of sales or business done of at least \$500,000.00.

8. At all times material to this complaint, Defendant, OM SHIVAM, INC., d/b/a KWIK KAR LUBE AND TUNE, was an enterprise engaged in interstate commerce or, in the alternative, owned and operated a business engaged in commerce or in the production of goods for commerce as defined by § 3(r) and 3(s) of the Act, 29 U.S.C. § 203(r) and 203(s).

9. Additionally, Plaintiff was individually engaged in commerce or in the production of goods for commerce and his work was directly and vitally related to the functioning of Defendants' business. Specifically, Plaintiff worked on and utilized goods and products, including, but not limited to, oil products and automobiles that moved in interstate commerce or were moving in interstate commerce.

10. Plaintiff worked for Defendants from approximately to March of 2010,

until June of 2012 as a lube technician in Copperas Cove, Coryell County, Texas.

11. During one or more weeks of Plaintiff's employment with Defendant, Plaintiff worked in excess of forty (40) hours (overtime hours).

12. Defendants failed to act in good faith and/or reasonably in their efforts to comply with the FLSA; thus, Plaintiff is entitled to an award of liquidated damages in an equal amount as the amount of unpaid overtime pay pursuant to 29 U.S.C. § 216(b).

13. Defendants willfully failed to pay Plaintiff one and one-half times his regular rate of pay for each overtime hour worked.

14. Defendants either knew, or showed reckless disregard for the matter of whether its conduct was prohibited by the FLSA and failed to act diligently with regard to its obligations as an employer under the FLSA.

15. The acts described in the preceding paragraphs, *supra*, violate the Fair Labor Standards Act, which prohibits the denial of overtime compensation for hours worked in excess of forty (40) per workweek.

16. As a result of Defendants' unlawful conduct, Plaintiff is entitled to actual and compensatory damages, including the amount of overtime which was not paid, but should have been paid.

17. Plaintiff is entitled to an award of reasonable and necessary attorneys' fees, costs, expert fees, mediator fees and out-of-pocket expenses incurred by

bringing this action pursuant to 29 U.S.C. § 216(b) and Rule 54(d) of the Federal Rules of Civil Procedure.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, DWAYNE D. MCGOWAN demands Judgment against Defendant, OM SHIVAM, INC., d/b/a KWIK KAR LUBE AND TUNE, and AMIT PATEL, jointly and severally, for the following:

- a. Unpaid overtime wages found to be due and owing;
- b. An additional amount equal to the amount of unpaid overtime wages found to be due and owing as liquidated damages;
- c. Prejudgment interest in the event liquidated damages are not awarded;
- d. Reasonable attorneys' fees, costs, expert fees, mediator fees and out of pocket expenses incurred by bringing this action pursuant to 29 U.S.C. § 216(b) and Rule 54(d) of the Federal Rules of Civil Procedure; and,
- e. For any such other relief as the Court may find proper, whether at law or in equity.

JURY TRIAL DEMAND

Plaintiff, DWAYNE D. MCGOWAN, demands a jury trial on all issues so triable.

Respectfully submitted this 7th Day of February, 2014

ROSS LAW GROUP



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 7, 2014, a true and correct copy of the foregoing was served via electronic service through the Court's CM/ECF filing system to:

AARON C. DE LA GARZA
CLAUDE E. DUCLOUX
Hill Ducloux Carnes & de la Garza
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Charles L. Scalise